

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
WORCESTER DIVISION

GERALD GROCCIA

Plaintiff, Pro Se

v.

INTERCONTINENTAL  
HOTELS GROUP, INC.

NEWPORT HOSPITALITY  
GROUP, INC;

HOLIDAY INN EXPRESS

LEONARDO MEDIA B.V.

VFM LEONARDO, INC.

Defendants

Civil Action No. \_\_\_\_\_

Complaint and Jury Demand

COMPLAINT

NATURE OF THE CASE

This is an action for injunctive relief and damages arising out of the Defendants infringement of Plaintiff's copyright for an image, namely "The Breakfast Bar Image". The Defendants actions were willful and knowing, thereby entitling Plaintiff to increased damages and attorney's fees.

PARTIES

1. Gerald Groccia, Plaintiff, is an individual residing at 116 School Street, Boylston, MA 01505 Plaintiff owns and operates OnSite Studios and is the Principal Photographer and sole owner of the image in question.
2. On information and belief the following information is accurate regarding the Defendants:
  - a) InterContinental Hotels Group, Inc.  
D. Franklin Moore, Jr., Vice President and Associate General Counsel  
Three Ravinia Drive, 22<sup>nd</sup> Floor  
Atlanta, George 30346-2121
  - b) Newport Hospitality Group, Inc., Michael Pleninger, President/CEO  
4290 Newtown Ave., Williamsburg, VA 23188
  - c) Holiday Inn Express, Annette Legere, General Manager  
10-12 Johnson St, Auburn, MA 01501

d) Leonardo Media B.V., David Elton, CEO  
100 Park Avenue, 16<sup>th</sup> Floor, New York, NY 00017

e) VFM Interactive Inc.; VFM Leonardo, Inc., Paolo Boni, President/CEO  
111 Peter Street, Suite 530, Toronto, Ontario, Canada M5V 2H1

### JURISDICTION

3. This Court has subject matter jurisdiction over this action pursuant 28 U.S.C. 1331 (Federal question) and 28 U.S.C. V, Chapter 85; § 1338 (action arising under an Act of Congress relating to copyrights pursuant to copyright laws under Section 102(a) of the U.S. Copyright Act of 1976.

### VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b); and (c) and 28 U.S.C. § 1400.

### FACTUAL BACKGROUND

5. The image entitled "the "Breakfast Bar Photo", a copy of which is attached hereto as Exhibit A, was and is the sole property of the Plaintiff. A Copyright has been duly and legally applied for with the Copyright Office of the United States (Case No. 1-173253511; Claim ID: 1-2V5F9L). Prior to effective registration, the image was and is protected under common law rights and under consumer protection statutes.
6. Plaintiff continues to own all right, title and interest in said image.
7. On information and belief, the Defendants have used; copied; distributed; and continue to so use copy and distribute said copyright protected image owned by Plaintiff. Plaintiff has irrefutable and compelling evidence of at least 196 hotels infringing on said image. Defendants, without Plaintiff's knowledge and consent, sent said image to a publically accessible website library of 60,000 images and said image was thus subject to download and use by any third party, in essence "Napsterizing" said image. Plaintiff believes that it is conceivable that more hotels used said image, without consent of Plaintiff, further infringing on Plaintiff's rights.
8. On information and belief, the Defendants have infringed, and may continue to infringe, directly or indirectly, on the Plaintiff's rights to said image. Plaintiff became aware of said infringements on or about June 28, 2006.
9. On information and belief Plaintiff's former attorney served Notice and Demand on Defendant(s) on or about July 5, 2006 by telephone and by letter in July 11, 2006.
10. On information and belief, the Defendants acts of infringement were and are intentional and willful.
11. On or about February 26, 2007, Defendants, through their attorneys and insurance carrier did proffer a settlement offer to Plaintiff that was woefully inadequate and not in good faith and Plaintiff thus rejected said offer and has been awaiting a realistic offer from Defendants.

### COUNT I

12. Despite knowing of the Plaintiff's rights and protection regarding said image, the Defendants have and may still continue to willfully infringe; have assisted in the infringement by others; and/or allowing and/or inducing said infringement.
13. Defendant's infringement of the Plaintiff's rights has been willful, entitling Plaintiff to enhanced damages.

14. Plaintiff has been damaged by Defendants infringement and said damages will continue unless enjoined by this Court.

RELIEF REQUESTED

WHEREFORE, by reason of the foregoing, Plaintiff respectfully requests that this Court:

- A. By permanent injunction enjoin the Defendants, as well as their parents, subsidiaries, affiliates, officers, agents, servants, employees, attorneys and all other persons acting by or through them from infringing upon Plaintiff's rights pursuant to 17 U. S. C. § 113 and said image to be delivered up for destruction or other disposition as the court may direct pursuant to 13 U.S.C. § 1323 (e).
- B. Award Plaintiff judgment against Defendants for copyright infringement and award damages adequate to compensate for the infringement, together with interest and costs, pursuant to 17 U.S.C. § 1323 and 17 U.S.C. § 504(d); (Additional Damages in Certain Cases).

Actual statutory damages are in excess of \$686,000.00 based upon the accepted and customary average value of an image of the type of Plaintiff's image. There have been approximately 196 known infringements by Defendants at \$3,500.00 per infringement, for a total of \$686,000.00. Of said 196 infringements, 58 involved use of said image to acquire reservations on Defendant's Web Site for hotels under construction but not yet open.

- C. Award Plaintiff judgment against Defendants for willful copyright infringement and increase the damages found or assed, pursuant to 13 U.S.C. § 1323 (a) and 17 U.S.C. § 504(d) (Additional Damages in Certain Cases).
- D. Award Plaintiff his attorney's fees, costs and expenses, pursuant to 13 U.S.C. § 1323 (d) and 17 U.S.C. § 505 (Remedies for infringement: Costs and Attorney's Fees).
- E. Award Plaintiff such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

14. Plaintiff demands a trial by jury on all issues triable of right by a jury.

Dated this the 19<sup>th</sup> day of June, 2009

I hereby certify that the foregoing statements are true and correct to the best of my knowledge and belief.

Respectfully submitted,



Gerald Groccla, Plaintiff, pro se

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Complaint has been mailed to each of the Defendants as follows:

InterContinental Hotels Group  
D. Franklin Moore, Jr., Vice President and Associate General Counsel  
Three Ravinia Drive, 22nd Floor, Atlanta, GA 30346-2121

Newport Hospitality Group, Inc. Michael Pleninger, President  
4290 Newtown Ave., Williamsburg, VA 23188

Holiday Inn Express Annette Legere, General Manager  
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\_\_\_\_\_  
Gerald Groccia, Plaintiff, pro se